

Will Your Family Inherit Problems?



“SHOULD I have a will?” The answer to this often-asked question is a resounding “yes.” The need for Soldiers and government workers to ensure their affairs are

in order was greatly magnified by events following the attack on the Pentagon in 2001.

The military and civilian fatalities left survivors and the federal government with many unresolved legal issues concerning individual personal affairs, ranging from distribution of money and personal property and the dispensation of motor vehicles and other titled property, to deciding ownership of property in shipment or government quarters, to determining custody of children.

The following are some of the factors to be considered in determining the contents of your will:

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The Executor

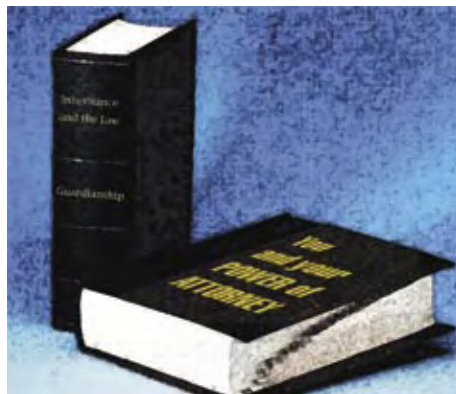
The executor is the deceased’s personal representative; a person who has the legal authority to act on the decedent’s behalf.

○ This is the person recognized to collect monies, pay bills, negotiate drafts, sign releases, transfer ownership or sell property, sue on behalf of the deceased, exercise options, settle litigation, and make distribution of the estate according to the wishes of the deceased.

○ Persons and corporations will not hand over money or property to anyone, including relatives, unless the recipient has legal authority to act on behalf of the deceased. This is because the payer of funds or

property must deal with a person who will provide them with legal immunity against future claimants. Only the executor named in the will can do so.

○ Should court litigation be required because of wrongful death of the deceased — or to collect damages of funds, cause an eviction, file a criminal complaint, etc. — the executor is the proper



party for lawsuits. Monies collected as damages due to a person's wrongful death will be distributed according to the wishes of the deceased as stated in the will.

A Will vs. Power of Attorney

A power of attorney is not a substitute for a will. The POA is terminated at the death of the principal, and the will executed by the deceased's personal representative is put in force.

Monetary Considerations

Two major portions of a will cover the settling of debts and the distribution of inheritances.

○ The manner of debt satisfaction, the offset of monies owed by beneficiaries to the deceased, the primary and alternate beneficiaries and necessary periods of survivorship in order to inherit, the scheme of distribution, specific gifts and life estates with remaining beneficiaries are among the items to be addressed, based on the size and complexity of the estate.

○ Protection of inheritance is provided by declaring whether inheritances shall come under a testamentary trust or the Uniform Gift to Minors Act.

Guardianship

For most parents, the most important reason to create a will is to ensure the well-being and protection of their underage children. A will identifies

who will act as guardian for these children, and how that duty will be carried out.

A Will or a Living Trust?

A will is much cheaper to create and administer than a living trust. In most states, a layman may probate the will without an attorney. And remember: legal-assistance attorneys prepare wills for Soldiers, retirees and their family members at no cost.

○ Contrary to popular belief, not every will must be probated. In a typical married relationship in which the property is jointly held, a will is not normally probated upon the death of the first


spouse, since there may be nothing to accomplish by the will. When the second spouse dies, the will may then become the vehicle to transfer ownership of property, create a testamentary trust, appoint a guardian, etc., and will require the simple process of probate.

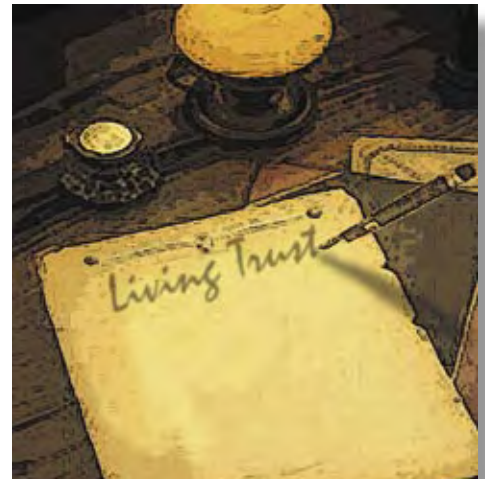
○ Most clients seeking living trusts to avoid estate taxes do not truly need the trust to avoid taxation. For example, federal estate taxation exemption for 2005 is **\$1 million per person**. Further, if you are above that tax-exemption level, a single taxpayer or a person who is a widow or widower cannot avoid taxation by creating a living trust. Also, the costs to create a trust are normally several thousand dollars and they do not include the fees needed after death to transfer ownership of property and other assets covered by the trust.

○ Also, trusts do not provide for the various authorities provided by a will. Therefore, even if a living trust is appropriate, a will must also be created to augment the trust. When action needs to be taken, lacking a will necessitates the cumbersome process of going through court under the law of intestacy to have the court appoint an administrator, with distribution and rules established by the state legislature.

What Remains

Lastly, the deceased's wishes for a funeral and burial can be outlined in the will. The type of ceremony, whether cremation or burial is desired, the cemetery of choice, and other personal wishes can be specified to avoid having these individual decisions burden the next of kin.

As a legal-assistance officer I always advise Soldiers and their adult family members to have a will. If you do not care about your estate or next of kin, you cannot be forced to have a will. But should a will be desired by active-duty or retired military personnel and their eligible family members, legal-assistance attorneys are available to provide this valuable benefit at no cost. 



The exemption is corrected to \$1.5 million per person.

Prepare Your Will Now!